



City of Boston
Office of
Cable Communications

Raymond L. Flynn
Mayor

Thomas P. Cohan
Director

February 5, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Reply Comments MM Docket No. 92-266

Dear Ms. Searcy:

Please find enclosed one original and four copies of the Reply Comments for the City of Boston's Office of Cable Communications regarding the Notice of Proposed Rulemaking, MM Docket No. 92-266.

Sincerely,

Thomas P. Cohan

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act of 1992

Rate Regulation

MM Docket No. 92-266

To: The Commission

REPLY COMMENTS OF
City of Boston

Introduction

The City of Boston, by and through its Office of Cable Communications, hereby submits these reply comments in response to the above-captioned proceeding. Under Massachusetts law (Massachusetts General Laws, Chapter 166A), the Mayor of the City of Boston, as Issuing Authority, has the authority and responsibility for establishing and overseeing the installation and operation of any cable communications systems within the City's corporate limits. In December of 1982, the Issuing Authority granted a fifteen (15) year, non-exclusive license authorizing the construction, operation and maintenance of a cable communications system in the City of Boston. The City of

Boston has issued only one (1) such license to a cable television operator. The cable system, at present, serves approximately 108,000 subscribers throughout the City.

One of the City's principal responsibilities is monitoring and enforcing consumer protection provisions contained in the cable license, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") and applicable State statutes and regulations, as well as representing the interests and lobbying on behalf of Boston cable subscribers. To this end, the City has filed comments with the FCC in a number of different Rulemakings, including "Effective Competition" (MM Docket No. 84-1296), "Must Carry" (MM Docket No. 85-349), "Telephone Company-Cable Television Cross-Ownership" (CC Docket No. 87-226), "Availability of Broadcast Television Signals" (MM Docket No. 88-138), "Competition and Rate Deregulation" (MM Docket No. 89-600), "Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates" (MM Docket No. 90-4), as well as reply comments to the Commission's Notice of Proposed Rulemaking in the instant matter.

Discussion

The City of Boston (the "City") has reviewed the comments submitted by the National Association of Telecommunications Officers and Advisors, National League of Cities, United States

Conference of Mayors, and National Association of Counties ("Local Governments") submitted in this proceeding. The City believes that the comments filed by Local Governments accurately reflect the City's position on the implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") related to Rate Regulation. Accordingly, the City concurs with the comments filed by Local Governments and respectfully requests the Federal Communications Commission ("Commission" or "FCC") to consider carefully these comments.

The City of Boston concurs with Local Governments that the main goal of the Commission in implementing Section 623 of the Communications Act of 1934, as amended by Section 3 of the 1992 Cable Act, is "to adopt regulations that are consistent with the statutory policy of ensuring that "where cable television systems are not subject to effective competition, . . . consumer interests are best protected in the receipt of cable service." Section 2(b)(4), 1992 Cable Act. Consistent with this goal, Local Governments (and the City of Boston) believe that such regulations should "seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission." Section 623(b)(2)(A). Local Governments (and the City of Boston) believe that it would be consistent with the public interest and administratively efficient for the Commission to grant municipalities maximum flexibility in enforcing the Commission's regulations for the basic cable tier and to show

deference to a municipality's applications of such regulations so long as such application is not irreconcilable with the Commission's regulations, or is not arbitrary and capricious. Moreover, to reduce the administrative burdens on the Commission on national rate regulation, Local Governments (and the City of Boston) encourage the Commission to grant franchising authorities a role in enforcing the Commission's regulations governing the rates for cable programming services, leased access, and subscriber bill itemization. Such flexibility and enforcement power are consistent with Congress' desire that franchising authorities and the Commission act as partners in regulating cable rates."

The City of Boston urges the Commission to take the following actions, as called for in the comments submitted by Local Governments, to achieve the statutory policy reflected in Sections 623, 612 and 622(c):

- * adopt a method for national benchmark rates;
- * eliminate monopoly rents in current cable rates;
- * prevent evasions by roll-backs to October 1992 rates;
- * presume no "effective competition" in franchise areas;
- * permit local communities to jointly regulate rates;
- * adopt "post card" basic rate certification form;
- * preempt state law prohibiting rate regulation;
- * unbundle equipment rates from programming service rates;
- * limit equipment and installation rates to "actual costs;

- * regulate rates for tiers containing premium services;
- * require cable system to prove that rate is "reasonable";
- * do not exempt small cable systems from rate regulation;
- * limit cable bill itemization to direct costs.

The City of Boston believes that the adoption of these proposals will, first and foremost, ensure that consumers are fully protected by the rate regulatory provisions of the 1992 Cable Act.

The City would also like to make specific comments on the following issues raised in comments filed as part of this Rate Regulation proceeding:

"Reasonable" Rates for Basic Cable Service

The City believes strongly that it was the intent of Congress, in instructing the Commission to ensure that rates for basic service be "reasonable" and to ensure that rates for cable programming services not be "unreasonable," to allow for rate reductions or rate rollbacks in those cases where a cable operator could not meet the test for reasonableness. Congress, in fact, would not have even been dealing with this issue if it were not for a hue and cry from consumers all across the country faced with regular monopoly-based price increases that pushed monthly cable fees far beyond what could be considered "reasonable."

The City agrees with those who encouraged the Commission to establish a "benchmark" reasonable rate for basic service. In determining such a benchmark, the City strongly urges the Commission to recognize this Basic Service, as defined by Congress, for what it truly is. A Basic Service which contains the required local broadcast channels and local PEG access channels and which is available at a low cost, will provide critical access to local communications services to many elderly people and others living on a fixed income who may not be able to afford, or who may not wish to purchase additional cable programming services. Such a service, however, will certainly not be in great demand by any large group of cable subscribers. Those cable operators that have already offered similar "reception" or "antenna" services to their subscribers have generally found that only about two or three percent of their subscriber base takes advantage of such a service. The City would, thus, urge the Commission to set a benchmark at no higher than \$5.00 per month for those systems carrying the number of local broadcast channels that approximates the national average for the number of broadcast channels meeting carriage requirements in a local cable system. For systems carrying fewer than the national average of local broadcast channels, establish a formula to reduce the rate below \$5.00 per month; for those systems carrying more than the national average of local broadcast channels, establish a similar formula to increase the rate slightly above \$5.00 per month. The

City believes that "reasonable" should be mean "affordable" and should be further defined to mean affordable to those who could benefit most, and who are most likely to take advantage of such a locally-oriented basic cable service.

Effective Competition

The City agrees with the arguments of Local Governments that the 1992 Cable Act prohibits the Commission from measuring the 15-percent penetration test under the effective competition standard "cumulatively, i.e., by adding the subscribership of all alternative multichannel video programming distributors (other than the largest) together." NPRM at #9.

The City also believes that effective competition should be measured in the actual service area of the cable operator. Real competition only exists if an individual consumer has a choice between two or more providers of video programming that is comparable in terms of the type of programming and the number of channels provided. In the City of Boston, there are several large housing developments, located entirely on private property, which have satellite master antenna systems (SMATV) and which have effectively barred the franchised cable operator from providing cable service to those properties. These SMATVs, the City would argue, are not providing effective competition to the franchised cable operator. Furthermore, until the franchised cable operator gains access to those properties, the City would not consider

those properties to be part of the cable operator's service area for the purpose of measuring effective competition.

Regulation of Basic Service Rates

Section 623(b)(1) states that "the Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable."

The City disagrees with the Commission's assertion in its Proposed Rulemaking that the Commission only has the power to regulate rates in those cases where it has disallowed or revoked the franchise authority's certification. The Congress clearly intended for cable subscribers to be protected from unreasonable rates. The City believes that the Commission must act as the regulator of basic service rates, except in those cases where a franchising authority seeks certification to regulate rates.

To ease any potential administrative burden on the Commission, the City recommends that the Commission: 1) establish a very simple certification form for franchising authorities seeking to regulate basic service rates, and 2) this form should reflect a presumption that there is no effective competition. It seems only fair that the burden be placed on the cable operator to demonstrate that it is subject to effective competition because the operator alone would have all of the data necessary to prove its case.

The City also firmly believes that Section 623 preempts state laws that prohibit rate regulation of cable systems. "If the Commission finds that a cable system is not subject to effective competition," Section 623(a)(2)(A) states "the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission . . ." (emphasis added).

The City further supports the argument made by Local Governments that "Section 623 represents a comprehensive effort by Congress to regulate cable rates and demonstrates a clear intent to preempt incompatible state laws, thus making unnecessary "'an express congressional statement to that effect.'"

The City urges the Commission, in its final Rule Making on this matter, to clarify the issues raised by the Massachusetts Community Antenna Television Commission in its comments as part of this proceeding related to the authority to regulate rates.

It would certainly not be in the public interest to provide a cable operator with an opportunity to delay implementation of rate regulation by a local franchising authority because of jurisdictional questions that should be addressed as part of this Rule Making. The City also believes that the Massachusetts Community Antenna Television Commission can play an important role in assisting Massachusetts franchising authorities in implementing the regulation of rates charged for basic service,

installation and equipment, as well as other matters related to implementation of the 1992 Cable Act.

Subscriber Bill Itemization

The City urges the Commission to establish clear regulations that stipulate that a cable operator that chooses to itemize costs pursuant to Section 622(c) may only itemize direct and documentable costs of franchise fees, PEG requirements or other fees, taxes and assessments imposed by a franchising authority on the transaction between the operator and the subscriber. It would be useful for the Commission to establish a standard format for this information to appear on a subscriber bill, and to ensure that only those costs that are documented to the satisfaction of the franchising authority and that meet the requirements of the Commission appear as a separate item on a subscriber bill. Furthermore, this separate line item should be included as part of the total amount a cable operator charges a subscriber for service; the Commission should prohibit operators from itemizing these as separate costs over and above the amount the operator would charge for cable service.

It is equally important for the Commission to clarify as much as possible which costs may be itemized by an operator. The City believes, for example, that general property taxes and personal property taxes, which are paid by a cable operator as well as every other commercial enterprise within the City's corporate limits, are not subject to itemization under Section

622(c). In addition, the City would concur with the position taken by the Massachusetts Community Antenna Television Commission in its comments filed in this Rule Making that copyright fees and retransmission consent fees are not subject to itemization under Section 622(c).

Summary


The City of Boston urges the Commission to establish regulations that will, in fact, establish a working partnership between local franchising authorities and the Commission with the expressed goal of protecting consumer interests.

Like the hundreds of thousands, if not millions, of consumers across the country who have been urging Congress to regulate the cable monopoly, Boston residents are demanding that we in government ensure the costs for cable television are both reasonable and affordable to all. From late 1982 through 1986, Boston residents had access to a very affordable \$2/month basic service. Today, however, local residents are faced with an entry level rate that has increased to \$20.45/month. Needless to say, consumers are angry, and it is not just the service rates that consumers are complaining about. The City's Office of Cable Communications is continually hearing from subscribers who complain about such things as : 1) cable equipment that is incompatible with their television receivers and VCRs -- either the remote controls don't work or certain features no longer work

once their equipment is connected to the cable equipment; 2) the \$15 charge for a change of service that is done electronically with the flick of a switch; or 3) the \$12 monthly charge to receive the same cable service on an additional television. All of these issues are important to consumers, and all should be given careful consideration by the Commission in establishing new regulations.

In closing, the City would like to re-iterate its support for the full range of Comments filed by Local Governments in this proceeding.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Thomas P. Cohan", is written over a horizontal line.

Thomas P. Cohan
Director
Office of Cable Communications
City of Boston
43 Hawkins Street
Boston, MA 02114

Date: February 5, 1993